

Internal Revenue Service  
District Director

Department of the Treasury

P. O. Box 2508  
Cincinnati, OH 45201

NO PROTEST  
RECEIVED  
10-24-90

Date: ~~AUG 14 1991~~  
SEP 24 1990 REMAILED

Employer Identification Number:

Person to Contact:

Telephone Number:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(6) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not

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one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]  
District Director

Enclosures: 3

Enclosure I  
Reasons for proposed denial of exempt status

EIN: [REDACTED]

Information submitted with your application shows that the [REDACTED] (hereafter the "Association") was incorporated [REDACTED]. Your Articles of Incorporation state that your purposes are:

To carry out such advertising and promotional programs as shall be deemed for the general welfare of the [REDACTED];

To foster good public relations among the Association and its members and the communities and organizations in the area;

To foster a continuous publicity program for the promotion of the [REDACTED] and the business of its tenants, and to attract shoppers to the Center;

To make and enforce such rules as are consistent with the responsibilities of the members to the Association and to each other.

Your Bylaws state that your two membership classes are Active and Associate. Only an individual, partnership or corporation who or which shall be the proprietor of a business or profession carried on in the mall or the owner of real property therein shall be an Active member. Active members shall consist of: (1) Tenant members, being tenants or representatives of tenants of the mall; or (2) Landlord members, being the representative or representatives of the landlord of the mall. Any individual, partnership or corporation making application to be an Associate member, and who or which in the opinion of a majority of the Board of Directors shall have a legitimate interest in the purpose and objects of the Association as set forth in the Articles of Incorporation and shall be otherwise worthy of membership, shall be elected an Associate member if such application shall be approved by a majority of the Board of Directors. Only Active members shall be entitled to vote and each Active member shall have one vote for each \$[REDACTED] of annual dues paid or chargeable such Active member (or fraction thereof, if, less than \$[REDACTED]). On your application for exemption you indicated that membership is voluntary.

You have the power to assess your members for the cost of your activities, including reasonable overhead charges. Each tenant member shall be assessed dues in the amount set forth in the individual leases entered into between the landlord and each tenant subject to annual upward adjustments approved by a two-thirds majority of the outstanding vote of the members of the Association, increasing said dues to the extent required by increases in the cost of promotional, public relations and advertising services.

Enclosure I con't

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EIN: [REDACTED]

On your application for exemption you stated that even though your organization was incorporated in [REDACTED], there has been little or no activity until [REDACTED]. You stated your organization was organized to promote the common business interest of your members, to foster good public relations between your Association, your members and the community, and to enhance the shoppers' stay at the mall. You stated promotional events and activities have been held and these have fostered your relationship with the community, enhanced the shoppers' visit to the mall, and improved business conditions of the mall in general. You stated these activities provide no direct service or benefit to any individual members. Style shows, arts and crafts shows, baseball card shows, stock car shows and Santa Claus are some of the promotional activities held in the past. Several children's rides and vending machines are in place in the mall and are intended to enhance the shoppers' stay at the mall and also serve as a fund-raising activity. You stated that the only advertising you do to promote the mall is on radio and in the newspaper.

Each store manager in the mall is a member of your organization. There are [REDACTED] tenants in the mall. You have [REDACTED] associate members and [REDACTED] active members.

Your Bylaws state that your income shall be used for general advertising and promotional purposes. None of the income shall be spent in advertising, in any form, any particular tenant's business, merchandise, or service, or for advertising or promotions carried on inside the store building of any tenant, or for displays placed in store windows.

You receive income from the rental of space for promotional events. Every January, you send out a mailer to crafters within a 100 mile radius inviting them to rent space for promotional events you will have at the mall during the year. An organization named [REDACTED] owns the children's rides placed in the mall. [REDACTED] pays you [REDACTED] percent of the funds collected from the rides for keeping up the maintenance on these rides, collecting the money, and allowing [REDACTED] to place the rides in the mall. You also receive membership dues from the merchants and commissions on vending machines placed in the mall. You stated that generally no funds will be spent for purposes other than advertising and promotion, supplies and the cost of operating vending machines and children's rides. Your financial statements indicate that funds are spent primarily for promotional gifts and expenses and advertising.

In a letter to you, we asked that you explain why you believe your organization qualifies for exemption under section 501(c)(6) of the Code. You stated you believe your organization is very similar to a chamber of commerce, except on a much smaller scale. You stated the Association was established for the improvement of business conditions

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generally in the [REDACTED], much the same as a chamber of commerce does for the area it covers. You stated promotion and advertising done by a chamber of commerce does provide a service to their members to a degree, but are done with the idea of improving business conditions generally. You stated that the association also operates in this way and that promotion and advertising are done in a general way and no specific benefits or earnings inure to any individual member. You stated the Association promotes the common economic interests in the mall.

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues, chambers of commerce, and boards of trade not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Regulations states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common business interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Revenue Ruling 64-315, 1964-2 C.B. 147, describes an association of merchants whose businesses constituted a shopping center. The purposes, as stated in the articles of incorporation, were to foster public relations, advertising and publicity campaigns of all kinds, to perform chamber of commerce activities and generally to promote the best interests of the merchants and citizens of the community. The activities and expenditure of funds were exclusively for advertising in various newspapers and on television and radio, and certain promotions designed to attract shoppers to the shopping center. This advertising contained the names of member merchants and their merchandise. This revenue ruling states for an organization to meet the requirements for exemption as a chamber of commerce or business league within the meaning of section 501(c)(6) of the Code and Regulations, the advertising in which the organization engages must benefit business in the community generally, or an industry as a whole. Under the circumstances described, it was determined that the advertising the organization engaged in, by which means the organization advertised the merchandise and the names of its member merchants, was the primary purpose and activity of the organization. It was held that such activity constituted the performance of particular services for members rather than an activity directed to the improvement of business conditions generally as required by the applicable regulations. It was held that the organization did not qualify for exemption under section 501(c)(6) of the Code.

Enclosure I con't

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Revenue Ruling 73-411, 1973-2 C.B. 180, describes a membership association composed of all the business tenants and the corporate owner of a shopping center. The physical facilities of the center are typical of those found in many metropolitan areas and consist of a large complex of store, shop, and other commercial space, a covered mall and walks, roadways, and parking areas, all of which were designed and developed to be owned and operated as a single, integrated real estate enterprise. The organization served in part as a means of communication and exchange of views between the owner and the tenants of the center respecting matters relating to their tenant-owner relationship, and in part as a cooperative or governing body for developing and enforcing rules respecting the maintenance and policing of the shopping areas, walkways and parking areas, hours of business, and similar matters of common concern to the tenants and the owner. The organization also arranged and conducted various seasonal and other promotional affairs that were designed to stimulate the overall volume of trade in the center.

Revenue Ruling 73-411 states, in part,:

It has been established as a matter of statutory construction that in employing popular names in describing many of the organizations exempted under Subchapter F of the Code, such as "business leagues" and "chambers of commerce," and others, Congress is presumed to have had reference to organizations as they actually exist and are commonly known. This means that where the requisite characteristics of the organizations exempted by such terms are not otherwise fixed by regulations or statute, the Service is required to look to the characteristics of such organizations as they have commonly come to be known in actuality. It means also that successful applicants for exemption must be shown to possess at least the essential characteristics of the class of organizations commonly known by such names.

In the case of a chamber of commerce or similar organization, the common business interest is usually the general economic welfare of a community. Membership is voluntary and open generally to all business and professional men in the community. It has been accepted that an organization seeking exemption from Federal income tax under section 501(c)(6) of the Code as a chamber of commerce or board of trade must be one whose efforts are directed at promoting the common economic interests of all the commercial enterprises in a given trade community. Trade associations or business leagues are similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry.

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Since the organization in this case is not structured along particular industry or business lines but is composed of various types of business concerns and commercial endeavors comprising the shopping center in question, its right to exemption, if any, must rest on its characterization as a chamber of commerce or board of trade or similar organization. It is apparent at the outset, however, that neither the compulsory membership feature of the present organization nor the fact that its membership is determined without reference to any geographical or political community in the usual sense is characteristic of such organizations. The organization also lacks the essential element of public representation with respect to its membership and the "community" it purportedly serves which is characteristic of organizations commonly accepted as being chambers of commerce or similar organizations.

The public nature of the communities typically represented by such organizations is reflected, for example, in acceptance by the courts of standard dictionary and legal definitions that refer to such communities as comprising "a city" or "a locality, a country, or the like." The community represented by the membership of the present organization is a closed, nonpublic aggregation of commercial enterprises having none of the common characteristics of a community in the usual geographical or political sense.

Revenue Ruling 59-391, 1959-2 C.B. 159, holds that an organization whose membership is so restricted that each member represents a different trade, business, occupation, or profession does not qualify for exemption under section 501(c)(6) of the Code. This revenue ruling stresses that the members of such an organization have no common business interest other than a mutual desire to increase their individual sales and that the activities of such an organization are not directed to the improvement of business conditions of one or more lines of business.

Many of the broad-based publicity and promotional activities carried on by the organization are designed to stimulate the general volume of business carried on within the center. It is nonetheless evident that even these activities fall short of supporting any section 501(c)(6) qualification for the organization because the common business interests thereby being served are not the business interests of members of the kind of public business community contemplated by the statute.

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On the basis of the foregoing, the organization does not possess the essential characteristics of a chamber of commerce either as they were known at the time of enactment of the exemption accorded under section 501(c)(6) of the Code or as they have come to be known today. It, accordingly, does not meet the test of the statute and, therefore, does not qualify for exemption as a chamber of commerce or similar organization under the exemption provisions of section 501(c)(6).

Revenue Ruling 73-411 also clarified Revenue Ruling 64-315 which holds that an association of merchants whose businesses constituted a "shopping center" failed to qualify for exemption under section 501(c)(6) of the Code where its activities consisted principally of advertising the individual businesses of its members. That ruling was primarily addressed to the question of the effect of such advertising on the qualification of the organization for exemption under section 501(c)(6) of the Code. Revenue Ruling 73-411 states that in no event should Revenue Ruling 64-315 be construed as implying that a merchant's association whose membership is restricted to the tenants of a one-owner shopping center and their common lessor, and whose activities are directed solely to promoting the general interests of its members, may be exempt under section 501(c)(6).

The Association is composed of merchants in a mall and your activities include promotional activities and advertising to publicize the mall and attract shoppers to the mall. On the basis of all the evidence presented, we are of the opinion that the members of the Association have no common business interest other than a mutual desire to increase their individual sales and that the activities of the Association are not directed to the improvement of business conditions of one or more lines of business.

Your publicity and promotional activities are designed to stimulate the general volume of business carried on within the mall. As held in Revenue Ruling 59-391, these activities fall short of supporting any section 501(c)(6) qualification for the Association because the common business interests being served are not the business interests of members of the kind of public business community contemplated by the statute.

Membership in the Association is determined without reference to any geographical or political community in the usual sense as is characteristic of a chamber of commerce. Pursuant to Revenue Ruling 73-411, the Birchwood Mall Shopping Center is not a community because it has none of the common characteristics of a community in the usual geographical or political sense (i.e., comprising "a city" or "a locality, a country, or the like").



Enclosure I con't

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You are conducting activities for the mutual and exclusive benefit of your members. These types of activities constitute the performance of particular services for your members which is prohibited under section 501(c)(6) of the Code. The Association does not possess the essential characteristics of a chamber of commerce either as they were known at the time of enactment of the exemption accorded under section 501(c)(6) of the Code or as they have come to be known today. Accordingly, you do not meet the test of the statute and, therefore, you do not qualify for exemption as a chamber of commerce or similar organization under the exemption provisions of section 501(c)(6) of the Code.